

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2674

PETITION OF REYNALDO AND ZORAYDA LEE-LLACER

OPINION OF THE BOARD

(Opinion Adopted December 17, 2008)

(Effective Date of Opinion: February 9, 2009)

Case No. S-2674 is an application for a special exception, pursuant to Section 59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on June 22, 2007. The record in the case remained open until May 1, 2008 to allow the Petitioners time to address a restrictive note in the record plat for the property, and to pursue a sewer category change to address septic capacity on the site. The Hearing Examiner closed the record in the case on May 1, 2008, and on June 18, 2008, issued a Report and Recommendation for approval of the special exception, subject to conditions.

The subject property is Lot 36, Piney Glen Farms Subdivision, located at 12009 Piney Meetinghouse Road, Potomac, Maryland, 20854, in the RE-2 Zone

Decision of the Board: Special Exception **Granted**, Subject
to Conditions Enumerated Below.

The Board of Appeals initially considered the Hearing Examiner's Report and Recommendation at its Worksession on July 23, 2008, but deferred action on the special exception pending resolution of the site septic and sewer issues. The Board again considered the Report and Recommendation at its Worksession on December 17, 2008. After careful consideration, and review of the record in the case, on a motion by David K. Perdue, seconded by Catherine G. Titus, Vice-Chair, with Walter E. Booth and Allison Ishihara Fultz, Chair in agreement, and Carolyn J. Shawaker necessarily absent, the Board adopts the Hearing Examiner's Report and Recommendation and **grants** the special exception, subject to the following amended conditions:

1. Approval of this special exception is conditioned upon approval of a minor subdivision by the Planning Board, deleting a restrictive note on the record plat requiring removal of the guesthouse. If changes to the site plan or other plans

filed in this case are required at subdivision, Petitioners must file a copy of the revised site and related plans with the Board of Appeals.

2. Occupancy of the accessory apartment is limited to no more than two unrelated persons or a family not to exceed four persons.
3. Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in the Hearing Examiner's Report and Recommendation and in this Opinion.
4. Parking at the accessory apartment is limited to two vehicles, except for occasional transient guests, and parking of commercial vehicles and trucks of any kind is prohibited. This does not preclude delivery vehicles from making temporary stops to deliver or pick up parcels from or for shipment, during normal business hours. Storage of restaurant or other commercial equipment anywhere on the premises is prohibited.
5. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located.
6. There must be no guest room for rent, boardinghouse or registered living unit on the premises in addition to the accessory apartment. Petitioners must not receive compensation for the occupancy of more than one dwelling unit.
7. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Catherine G. Titus,
Acting Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of February, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.